

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BETH MAXWELL STRATTON, CHAPTER
7 BANKRUPTCY TRUSTEE FOR THE
SGP BENEFIT PLAN, INC.,

Plaintiff,

v.

GLACIER INSURANCE
ADMINISTRATORS, INC.; GLACIER
INSURANCE ENTERPRISE, INC.;
FRESNO AGENT SERVICE TEAM, INC
DOING BUSINESS AS BEN MAR
SERVICES; LAWRENCE THOMPSON;
BRAD STARK; PIERRE TADA; NORMA
SPALDING; DICK NEECE, SR;
WILLIAM WOLHAUPTER; AND DOES 1
THROUGH 250. INCLUSIVE.

Defendants.

1:02-CV-06213 OWW DLB

MEMORANDUM DECISION AND ORDER
RE APPROVAL OF CLASS
SETTLEMENT AGREEMENT AND
NOTICE; GRANTING PERMANENT
INJUNCTION AGAINST FUTURE
CLAIMS; ATTORNEYS FEES

1. INTRODUCTION

A hearing on the approval of case settlement agreement and related relief was held on September 18, 2006 and continued to November 22, 2006. Plaintiff, Beth Maxwell Stratton ("Stratton") has made a motion for (1) approval of the settlement agreement with all Defendants; (2) approval of proposed distribution of settlement funds; (3) permanent injunction against future claims or litigation; (4) approval of the bankruptcy trustee's final report of administration. Stratton brings this motion as a Chapter 7 Bankruptcy Trustee of the SGP Benefit Plan, Inc., and

1 as the court-appointed independent fiduciary for the SGP Benefit
2 Plan ("The Plan"), and the SGP Benefit Trust ("The Trust" or,
3 collectively, "SGP/P/T".) The proposed Settlement Agreement
4 resolves a dispute between the Plaintiff and Defendants Glacier
5 Insurance Administrators, Inc. ("Glacier"), Former Officers and
6 Trustees of SGP/P/T¹ ("Former Trustee Defendants"), and Sunkist.²
7 Objections to the settlement agreement were filed by six parties
8 who each seek a payment of their claims against SGP/P/T.³ Since
9 the September 18, 2006 hearing, these objections have been
10 resolved.

11 **2. PROCEDURAL HISTORY**

12 The initial complaint in this action was filed on October 1,
13 2002. (Doc. 1, Complaint.) The complaint was amended on October
14 28, 2002. (Doc. 8, Amended Complaint ("FAC").) On May 28, 2003
15 Stratton was appointed as Trustee and Independent Fiduciary of
16 SGP/P/T. (Doc. 46, Stipulation and Order Appointing Plaintiff,
17 Chapter 7 Bankruptcy Trustee, Beth Maxwell Stratton as
18 Independent Fiduciary and Trustee.) Stratton requested a
19 preliminary court approval of proposed settlements between the
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21 ¹ At times relevant hereto those officers and/or trustees
22 consisted of defendants Brad Stark, Pierre Tada, Norma Spalding,
23 Dick Neece, Sr., and William Wolhaupter, as well as Sunkist
employee Ted Jones.

24 ² Stratton has dismissed Sunkist and Defendant Jones from
25 the action without prejudice to Stratton's right to re-file if
26 the settlement is not consummated. (Doc. 121, Motion for Final
Court Approval, Filed July 11, 2006.)

27 ³ The opposing parties were David Stark, Tenet Health
28 Systems Hospitals, Yuma Unified Medical Associates, David
Cruikshank, DaVita, Inc., and Kaweah Delta District Hospital.

1 parties to the litigation and of the notice to the claimants, as
2 well as a temporary stay and injunction of all litigation
3 connected with the SGP/P/T bankruptcy. (Doc. 81, Mot. for
4 Preliminary Court Approval of Proposed Settlements and of Notice
5 to Claimants, Filed August 4, 2004.) The motion was granted on
6 October 14, 2004. (Doc. 92, Order for Preliminary Court Approval
7 of Proposed Settlements and of Notice to Claimants by Plaintiff.)
8 As a result the parties were enjoined from proceeding in related
9 state court litigation until a final judgment was entered in this
10 federal case.

11 On July 11, 2006 Stratton requested final court approval of
12 the settlement agreement, notice to claimants, and a permanent
13 injunction against any future litigation. (Doc. 121, Mot. for
14 Final Court Approval.) Stratton then filed an addendum to her
15 motion on August 18, 2006. (Doc. 130, Mot. for Final Court
16 Approval, ERRATA to Memorandum of Points and Authorities, Filed
17 August 18, 2006.) A hearing on this motion was held on September
18 18, 2006 and continued to November 22, 2006.

19 On November 17, 2006 Stratton filed a Second set of Proposed
20 Findings of Fact and Conclusions of Law. (Doc. 170, Second
21 Proposed Findings of Fact and Conclusions of Law.) Stratton also
22 filed a proposed order. (Doc. 171, Proposed Order, Filed
23 November 17, 2006.)

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3. **FACTUAL BACKGROUND⁴**

A. The Plan

3 SGP was created in August 1990 as a California non-profit
4 mutual benefit corporation for the purpose of administering a
5 voluntary employees benefit association. The Plan, also referred
6 to at time as the Trust, is an employee welfare benefit plan
7 under ERISA § 1002(1)(A). It was designed to be a multiple
8 employer welfare arrangement in accordance with ERISA for the
9 purpose of providing medical, surgical, and/or hospital care
10 benefits to members and affiliates of Sunkist Growers, Inc.
11 ("Sunkist"). SGP was the designated plan sponsor.

12 Glacier Insurance Enterprises, Inc. ("Glacier") and its
13 president and chief executive officer, Larry Thompson, acted as
14 administrators and consultants of the Plan throughout its
15 existence. Glacier was responsible for reporting to the officers
16 of SGP/P/T.

17 Sunkist was an original promoter of the Plan and is alleged
18 to have been a fiduciary and party in interest with respect to
19 the Plan within the meaning of ERISA. 29 U.S.C. §1002(21); 29
20 U.S.C. §1002(14). Sunkist members and officers including some of
21 the former Trustee Defendants and Ted Jones, were also officers
22 of SGP and/or trustees of the Plan and Trust. Sunkist endorsed
23 and actively participated in promotion of the Plan and provided
24 certain assurances regarding Plan financing.

25 The Plan did well and operated without a loss throughout its

27 ⁴ Unless otherwise noted, the factual background is taken
28 entirely from Plaintiff's Motion for Final Court Approval. (Doc. 121, Mot. for Final Court Approval.)

1 first years of existence. However, the Plan began to show
2 significant losses by 1999. For its fiscal year ending September
3 30, 1999, it had a \$240,000 loss after accounting for funds in
4 reserve. By fiscal year end September 30, 2000, the annual
5 losses had increased to \$3.5 million.

6 The California Department of Insurance investigated the Plan
7 and directed that it stop accepting new insureds in July 2001.
8 The Plan ceased operation in October of 2001. The United States
9 Department of Labor ("DOL") conducted an exhaustive investigation
10 into the history and demise of SGP/P/T and determined that there
11 was possibly as much as \$10 million in medical claims against the
12 Plan outstanding and unpaid as of the end of 2001. No claims
13 have been paid since the Plan ceased operation in October 2001.
14 The plan is without assets and there are no funds to pay claims
15 except as may be produced through this litigation. Medical
16 providers began to seek payment of their claims directly from
17 their patients and/or their employers.

18 On February 25, 2002, SGP, Inc. filed for protection under
19 Chapter 7 of the United States Bankruptcy Code. Stratton became
20 the duly qualified, appointed and acting Chapter 7 Bankruptcy
21 Trustee of SGP. The bankruptcy case was removed to the district
22 court. On May 28, 2003 the court appointed Stratton as an
23 independent fiduciary of the Plan and Trust in place of Former
24 Trustee Defendants.

25 **B. Stratton Litigation**

26 On October 1, 2002 Stratton initiated litigation to recover
27 SGP/P/T's losses from Sunkist, Glacier, and the Former Trustee
28 Defendants alleging, in essence, each of the defendants had

1 breached fiduciary duties owed to SGP/P/T. Stratton alleged
2 causes of action for breach of fiduciary duties imposed by ERISA,
3 misrepresentation, breach of contract, negligence, and engaging
4 in prohibited transactions.

5 **C. Department of Labor Investigation**

6 Prior to the initiation of this litigation, the ("DOL") had
7 conducted an exhaustive investigation into the management,
8 operation, finances, and bankruptcy of the Plan. This
9 investigation included 570 hours of work, an inspection of
10 approximately 400 banker boxes of Glacier and Plan documents.
11 Approximately 1,600 key documents were identified that provided
12 information as to the cause of SGP's and the Plan's collapse and
13 as to the identity of those potentially responsible for the
14 collapse. The DOL also interviewed twelve different individuals
15 deemed most knowledgeable about the operation and downfall of the
16 Plan. These included interviews of Former Trustee Defendants and
17 a two-day interview of Larry Thompson.

18 The DOL shared with Stratton and her counsel the results of
19 its investigation. The DOL gave Stratton copies of key documents
20 and shared the substance of personal interviews and the
21 observations and conclusions drawn therefrom. Stratton and her
22 counsel reviewed and analyzed this evidence and conferred with
23 DOL representatives and counsel regarding the facts, issues, and
24 evidence in this case in an effort to reasonably identify those
25 individuals and entities with apparent liability and those
26 without. As a result, Stratton was able to avoid duplication and
27 to minimize the cost of conducting an extensive and time
28 consuming formal discovery to arrive at proposed settlements in

1 this litigation.

2 **D. Mediation and Proposed Settlements**

3 Stratton argues that the proposed settlements are in the
4 best interest of all the parties involved. The Settlement Funds
5 from all Defendants will result in a distribution of
6 approximately \$0.78 to \$0.83 on the dollar for allowed claims
7 against an ERISA plan which otherwise might remain bankrupt, pay
8 nothing, and leave participants and beneficiaries to respond
9 personally to the full amount of claims and/or suits of medical
10 providers. However, the proposed settlements are contingent upon
11 court approval and a finding that the agreements settle, release,
12 and foreclose all claims of SGP/P/T, Plan participants and
13 beneficiaries, and other potential joint tortfeasors or co-
14 obligors against the settling Defendants. Absent settlement the
15 litigants may incur substantial additional legal fees and costs,
16 while postponing resolution of outstanding claims for years, all
17 without certainty of recovering more than the proposed settlement
18 amounts or potentially any amount, whatsoever.

19 **1. Sunkist**

20 **a. The Settlement Agreement**

21 The first formal mediation session was convened in Fresno,
22 CA on October 14, 2002. It was presided over by John J.
23 McCauley, a formal civil litigator and a trained, certified,
24 independent, full-time mediator. The mediation was attended by
25 the following parties: (1) Stratton and her counsel, (2) trial
26 counsel for the Office of the Solicitor, United States DOL; (3)
27 Larry Thompson, represented by trial counsel and insurance
28 coverage counsel on behalf of Glacier, (4) Sunkist and Jones

1 through Sunkist's Vice President for Corporate Relations and
2 General Counsel as well as outside trial counsel.

3 Stratton claims that negotiations with Glacier at that time
4 were not productive. Negotiations with Sunkist were productive.
5 The negotiations took most of the day and continued via telephone
6 throughout the following week. On October 21, 2002, with the
7 mediator's assistance, Stratton and Sunkist reached a mutually-
8 acceptable framework for settlement. For seven months, Stratton
9 and her counsel negotiated details of the understanding with
10 Sunkist and reduced to a written Settlement Agreement and Mutual
11 Release which was signed on June 26, 2003. (Doc. 121, Stratton
12 Decl., Ex. A.) The agreement provides for resolution of all
13 Stratton's claims against Sunkist and Jones in return for Sunkist
14 promise to pay into the Plan a base sum of \$2.5 million to be
15 adjusted up or down depending upon total Plan claims ultimately
16 paid and amounts collected from other defendants. Sunkist
17 deposited the full \$2.5 million into an escrow account and
18 through subsequent agreements, released portions of it to pay for
19 the expenses of claims administration.

20 **b. The Likelihood of Success in Litigation**

21 Stratton believes that she has a better than 60% chance of
22 prevailing against Sunkist and Jones. However, Sunkist's counsel
23 disputes Sunkists' and Jones' liability for the Plan's losses.
24 Stratton claims that Sunkist directors controlled the Plan and
25 manipulated it to Sunkist's advantage. If successful, this claim
26 could produce a recovery of more than Sunkist has offered.
27 However, absent evidence that Sunkist had a formal fiduciary
28 position in the Plan, Stratton likely would have to prove acts of

1 active malfeasance by Sunkist. Sunkist insists there is no
2 evidence to support such a claim.

3 Sunkist argues that Stratton's claims arise from the
4 following three facts: (1) Three of the five trustees of the Plan
5 also sat on Sunkist's board of directors, (2) In November 1996,
6 Sunkist's board of directors committed Sunkist to contribute
7 capital to enable the Plan to meet its \$1 million excess reserve
8 requirements under 1994 legislation, and (3) In November 1996,
9 Sunkist renewed a trademark licensing agreement with the Plan in
10 return for a 1% royalty.

11 Sunkist maintains that even if Stratton established that
12 Sunkist was obligated to honor a capital contribution commitment
13 an/or that the trademark license was a prohibited transaction
14 under ERISA, she would recover much less than Sunkist's proposed
15 settlement. Sunkist asserts that its capital contribution
16 obligation was capped at the \$1 million statutorily required for
17 excess reserves and that only the \$258,581 Sunkist received as
18 licensing fees could be recovered if the licensing agreement were
19 to be a prohibiting transaction. Sunkist contests liability on
20 both claims and forcefully asserts factual and legal defenses to
21 both.

22 Sunkist also maintains, and Stratton acknowledges for the
23 purposes of this motion, that Sunkist's role in the operation of
24 the SGP Plan was more tangential than that of named defendants.
25 Although Sunkist organized the SGP Plan in 1990 as a benefit for
26 employees of its member-growers and affiliated citrus packing
27 houses, Sunkist employees were not eligible to participate in it,
28 and Sunkist denies it ever managed the Plan.

1 Sunkist further argues that its corporate structure actually
2 negates inference of control. Sunkist is a non-profit federated
3 marketing cooperative whose directors are grower-member
4 representatives selected by grower-members. Sunkist has no
5 inside directors. Most directors were principals and prominent
6 employees of citrus growing and packing businesses which marketed
7 fruit through Sunkist. These citrus business are financially
8 independent of Sunkist and one another, have their own employees,
9 and, in fact, compete with one another.

10 A number of these citrus businesses also were participants
11 in the SGP plan. The Sunkist-related SGP Trust trustees were
12 high ranking employees or principals of the other businesses
13 participating in the SGP Plan, not employees of Sunkist. Some
14 were Directors of Sunkist as well as Trustees of the SGP Trust.
15 (Doc. 130, Mot. for Final Court Approval, ERRATA to Memorandum of
16 Points and Authorities, Filed August 18, 2006.) As a result,
17 Sunkist maintains that the allegiance of these trustees was to
18 their own businesses, not to Sunkist. Moreover, claims dependant
19 on an "inferred" overlap may call for affirmative evidence that
20 Sunkist actually directed the activities of the Plan for its own
21 benefit. Stratton has not yet identified such evidence. The
22 Plan and its day to day activities were run by Defendant Lawrence
23 Thompson and Glacier who reported to the Plan trustees.

24 **c. Sunkist's Good Faith Efforts To Reach
25 Settlement**

26 Stratton claims that Sunkist has been cooperative in
27 settlement negotiations from the beginning. This cooperation
28 has, to a significant degree, made settlement of the entire case

1 possible. Sunkist was the very first party to actively
2 participate in settlement negotiations with Stratton and the
3 first to settle. For example, very early in the process it
4 agreed to provide the Plan with a guaranteed fund of \$2.5
5 million. This guarantee facilitates Stratton's efforts to pursue
6 and negotiate settlements with the other defendants.
7 Additionally, when Stratton needed funds to identify claimants
8 and administer the claims, Sunkist agreed to advance in excess of
9 \$200,000 of its settlement funds for that purpose even before the
10 proposed settlement was approved.

11 **2. Former Trustee Defendants**

12 **a. The Settlement Agreement**

13 Stratton and the Former Trustee Defendants engaged in
14 extensive settlement negotiations designed to resolve the case
15 without depleting insurance funds available for settlement. On
16 August 11, 2004 Stratton entered into a written settlement
17 agreement with the Former Trustee Defendants. (Doc. 121,
18 Stratton Decl., Ex. B.) Former Trustee Defendants' insurer
19 agreed to contribute \$1 million, to settle the case. This
20 agreement is contingent upon the court approving the settlement
21 and barring all future litigation against the Former Trustee
22 Defendants.

23 Stratton, with the concurrence of the DOL, has concluded
24 that immediately obtaining a \$1 million settlement from Former
25 Trustee Defendants, without risk or significant additional cost
26 to the Plan, is the most prudent course of action and in the best
27 interest of the Plan participants and beneficiaries.

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b. The Trustee Defendants' Insurance Policies

Stratton's formal discovery revealed that the Former Trustee Defendants, as a group, have two insurance policies that could provide insurance coverage in this action: an "Executive Protection Policy" and a "Directors and Officers Liability Policy," both issued by the Chubb Group of Insurance Companies and its parent, Federal Insurance Company. The limit of each policy is \$1 million.

Chubb asserts that only the "Executive Protection Policy" has any potential to provide indemnity for the claims and it claims that indemnity obligation is limited to state common law claim which are preempted by ERISA. Also both policies are "burning limits" policies, meaning that every dollar spent on the defense of this case reduces the amount of coverage available for indemnification or contribution towards settlement. More than \$300,000 has already been expended from the policies on legal fees.

After the Former Trustee Defendants tendered Stratton's claims to Chubb, the insurer issued a formal coverage opinion to the effect that while both insurance policies cover costs of defense, the "Directors and Officers" policy does not provide indemnity coverage for the claims in this case. Consequently, the maximum amount of insurance coverage the Former Trustee Defendants have to contribute to the settlement in this action is \$1 million.

c. The Likelihood of Success in Litigation

Stratton believes that she has a better than 60% chance of prevailing against the Trustee Defendants. Although Stratton is

1 confident in her claims against the Former Trustee Defendants,
2 she recognizes there is risk she may not prevail in litigation
3 against them. Stratton claims that the Former Trustee Defendants
4 vigorously deny liability. They contend that they properly and
5 prudently relied upon information and reports from professional
6 service providers, including Glacier defendants, and they assert
7 legal defenses based on ERISA preemption of Stratton's claims and
8 other grounds.

9 Also, pursuing litigation through trial would likely exhaust
10 all insurance funds otherwise available to satisfy a judgment.
11 Considering the defenses the Former Trustee Defendants have
12 asserted and the large number of consultants and trial experts
13 required to take this case through trial, the Former Trustee
14 Defendants' cost of defense has been credibly estimated to exceed
15 \$2 million. Thus, after litigation, there would be no insurance
16 proceeds left after trial to satisfy a judgment.

17 Lastly, Stratton believes that the Former Trustee Defendants
18 and their insurer will likely resist any attempt by Stratton to
19 seek a judgment over and above insurance coverage limits and then
20 must attempt to satisfy it directly from the personal assets of
21 one or more of the trustees. According to Stratton, any such
22 attempt would also be costly, time consuming, and potentially
23 unproductive as it would dissipate otherwise available insurance
24 funds. To the extent the Former Trustee Defendants have assets,
25 they are encumbered and/or protected by exemptions. Pursuit of
26 such litigation would also demand funds to cover Stratton's
27 consultants, experts, and other litigation expenses. SGP has no
28 such funds.

1 **3. Glacier Defendants**

2 **a. The Settlement Agreement**

3 On December 17, 2003, Stratton and the Glacier Defendants
4 underwent mediation presided over by retired Federal District
5 Court Judge, Layn R. Phillips,⁵ who is now a full time
6 professional mediator and manager of Irell & Manella's
7 Alternative Dispute Resolution Center in Newport Beach, CA. The
8 following parties were in attendance: (1) Stratton and her
9 counsel, (2) Larry Thompson, (3) Glacier litigation counsel, (4)
10 Glacier insurance coverage counsel, (5) General Star's Vice
11 President of Claims, (6) General Star's counsel, (7) and the
12 United States DOL through its counsel from the Office of the
13 Solicitor and its Senior Investigator.

14 After eleven hours of analyzing, evaluating, debating, and
15 attempting to compromise the competing claims, General Star
16 agreed to pay Stratton \$2 million in settlement of Stratton's
17 claims against all Glacier defendants subject to court approval
18 of the settlement terms. The parties spent the next several
19 months negotiating the details of the proposed settlement and
20 reducing them to the written settlement agreement and release
21 dated August 10, 2004. (Doc. 121, Stratton Decl., Ex. C.)
22 General Star expressly conditioned its willingness to pay the \$2
23 million on obtaining judicial assurances that it and Glacier
24 would not have to risk being exposed to further claims or demands
25 from other parties or claimants in connection with SGP or the

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⁵ Judge Phillips provided a declaration supporting the
28 settlement. (Doc. 121, Stratton Decl., Ex. E.)

1 Plan. Glacier's \$2 million has been deposited with the Registry
2 of this Court for payment over to Stratton with interest if the
3 settlements are approved.

4 **b. The Glacier Defendants Insurance Policy**

5 Glacier is insured under a \$5 million Business Errors and
6 Omissions Liability policy issued by General Star Indemnity
7 Company. General Star, noting among other things, policy
8 exclusions for claims under ERISA, claims arising out of
9 insolvency of the Plan, and claims for actuarial and underwriting
10 errors, denies that its policy provides any coverage for the
11 claims asserted herein.

12 General Star originally denied it even owed Glacier a duty
13 to defend Stratton's action. As a result, Glacier was compelled
14 to hire coverage counsel and file suit against General Star
15 claiming that, at a minimum, General Star owed Glacier a defense
16 under the policy. In response, General Star relented in part and
17 agreed to undertake the defense of these claims against Glacier
18 under a reservation of rights. General Star's reservation of
19 rights letter asserts several defenses to a claim for indemnity
20 coverage.

21 Also, General Star's policy is a "burning limits" policy,
22 which means that every dollar spent by General Star in defense of
23 these claims reduces the amount of coverage otherwise available
24 to indemnify Glacier against a judgment if one is obtained and if
25 coverage applies. Defense costs have been projected to exceed \$2
26 million given the substantial legal and factual issues to be
27 addressed in litigation and the number of consultants and trial
28 experts needed for the process. Absent settlement, SGP/P/T has

1 no means of paying such litigation expenses.

2 **c. The Likelihood of Success in Litigation**

3 Stratton estimates that she has a better than 75% chance of
4 prevailing in litigation against the Glacier Defendants.
5 However, Glacier intends to raise and vigorously litigate factual
6 and legal defenses against Stratton if the settlement is not
7 approved. Glacier's litigation counsel drafted a five page
8 memorandum outlining contentions Glacier will make and issues it
9 will raise if the case proceeds. (Doc. 121, Stratton Decl., Ex.
10 C.) Stratton disputes the claims made by Glacier. Further,
11 Stratton argues that Glacier raises a number of potentially
12 complex issues Stratton will be forced to litigate if the
13 settlement is not approved.

14 Stratton believes that this proposed settlement with the
15 Glacier Defendants is in the best interest of SGP/P/T. These
16 reasons include (1) concern over the potential viability of
17 insurance coverage issues raised by General Star, (2) Stratton's
18 inability to identify through extensive investigation any
19 substantial unencumbered assets in the name of any of the Glacier
20 Defendants, including Larry Thompson which would be available to
21 execution at the time a judgment was eventually obtained, (3) the
22 belief based upon comments from Judge Phillips, that General Star
23 would not pay more in settlement without litigation, (4) and the
24 belief that, absent settlement, the cost of hiring experts and
25 litigating the multiple complex claims and defenses could well
26 exceed \$2 million for each side so that even if Stratton
27 prevailed at trial, the net recovery to the Plan could be less
28 than that produced by a \$2 million settlement at this time.

D. Preliminary Court Approval

2 On October 14, 2004, the Court issued an Order preliminarily
3 approving the settlement agreements and temporarily enjoining all
4 within the Court's jurisdiction whose rights had been affected by
5 the SGP Plan's bankruptcy from pursuing or commencing any
6 litigation against the SGP Trustee, SGP Plan, Defendants in this
7 case, SGP Plan employers, and SGP Plan beneficiaries and
8 participants to collect amounts claimed due from the operation of
9 the SGP Plan. Thereafter, on December 21, 2004, by stipulation
10 of the parties, the Court issued a further order extending the
11 above protections to Sunkist and Jones and approving Stratton's
12 proposed Notice advising identifiable claimants of the
13 proceedings, the temporary injunctive relief, and the need for
14 each claimant to submit a Proof of Claim in a form which was also
15 approved by the Court.

E. Claims Administration

17 Stratton then, with the assistance of HealthComp Third Party
18 Administrators,⁶ a licensed and experienced third party claims
19 administrator for self insured health benefit plans, caused the
20 Court-approved notice and Proof of Claim form to be mailed

- (1) to the most currently determinable addresses of all post-1999 employer group participants in the Plan
- (2) all individuals and entities active in

⁶ The Declaration of Phillip Musson, President of HealthComp, outlines HealthComp's qualifications in detail and provides a detailed description of the procedures followed by HealthComp in identifying and notifying potential claimants, and administering claims they submitted against the Plan.

the Plan after 1999

(3) all medical providers who had a Plan
claim processed after 1999,

(4) and all individuals and entities who filed claims against SGP in the bankruptcy action.

As a result of these efforts, claims for payment of more than 10,000 medical services billings were identified. Stratton asserts that each and every claim was recorded, tracked, and evaluated by HealthComp professional in accordance with Plan provisions and professional standards. As a result, Stratton was able to determine whether, and the extent to which, each claim was covered by SGP Plan, whether the claimant was eligible for coverage, and the precise amount covered and owed under the Plan after application of deductibles, co-pays, co-insurance, coverage maximums, exclusions, PPO discounts, and other Plan limitations.

Further, because of the several successive efforts to get actual notice to all potential claimants, and the time needed to evaluate and determine the covered amount of each claim under the SGP Plan, HealthComp's claim administration continued through approximately November 2005. Through the process, HealthComp professionals have determined that there is a total of \$4,284,073.91 owing from the Plan on valid, timely, and unpaid claims. Though less than the amount originally estimated by DOL representatives, the total of allowed claims is consistent with what HealthComp professionals expected given that notices were sent to every person or business which had

1 done business with SGP or the Plan in 2000 and 2001.

2 **F. Proposed Settlement and Distribution**

3 Stratton's plan for distribution of the settlement proceeds
4 is as follows:

5 (1) Settlement Payments

a.	From Sunkist	\$2,027,376
b.	From Trustee Defendants	\$1,000,000 ⁷
c.	Glacier Defendants	\$2,000,000
	Total	\$5,027,376

10 (2) Costs and Expenses⁸

a.	Bankruptcy Trustee/Independent Fiduciary	\$105,000
b.	ERISA Consultant	\$53,800
c.	Litigation Counsel	\$860,000
d.	Accountants	\$17,600
e.	Other Administrative Professionals	\$7,900

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⁷ The settlement payments from both the Trustee Defendants
19 and the Glacier Defendants will be somewhat higher due to the
accumulation of interest.

20 ⁸ These itemized costs include costs and expenses incurred
21 to date and projected future costs and expenses Stratton believes
22 necessary to complete administration of the Plan and close the
23 SGP/P/T estate. As stated in her Declaration, Stratton has used
24 her best efforts to project accurately those future costs and
25 expenses, but as with any projection, hers may prove deficient or
26 excessive. If excessive by at least \$20,000, Stratton proposes
27 that the excess be distributed pro rata to each claimant. If the
excess, if any, is less than \$20,000 a second distribution likely
would yield only pennies to most claimants. Stratton proposes
that anything less than \$20,000 be deposited into the State of
California Unclaimed Property Fund for disbursement in accordance
with Code of Civil Procedure section 1300, et seq., as provided
in the Settlement Agreements.

1	f.	HealthComp, Inc. Claims Administrators	\$298,000
2	g.	Miscellaneous Other Administrative Expenses	\$110,000
3		Total	\$1,452,300
4			

5 (3) Approximate Balance for Distribution to Claimants

6	Total	\$3,575,076 ⁹
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7 Stratton claims that this proposed recovery for claimants
8 is multiple times greater than typically produced even in most
9 "asset" bankruptcy cases. Stratton proposes the following
10 procedure for actual release and distribution of the settlement
11 funds:

12 (1) If this motion is granted and a Final Order and
13 Judgment entered thereon and the time for appealing
14 expires or an appeal is filed but results in final
15 affirmation of this Court's order and judgment,
16 Stratton shall at that time petition this Court for
17 release of the settlement funds from Sunkist and from
18 the Court's Registry to her in trust for payment of
19 SGP/P/T expenses and claims pursuant to the above-
20 described and Court-approved plan of distribution.

21 (2) If an appeal is filed and an appellate court overrules
22 this Court's entry of the Final Judgement and Order or
23 remands the action to the Court for reconsideration
24 and the remand order directs or effects a material
25 change to the terms of a settlement with a settling

27 ⁹ This amount is approximate. The final amount will change
28 due to accrued interest and possible adjustment of administrative
expense. Presently, this represents \$0.83 for every dollar.

party, the Court shall, by agreement of Stratton and the settling parties, release the settlement funds from the Registry of the Court and return them to the settling parties and the Settlement Agreements will be deemed void ab initio and have no effect.

(3) If and after this Court's Judgment and Order become final and all prerequisites and conditions of settlement have been satisfied and Stratton has paid Plan costs and expenses, distributed the settlement funds to the claimants, and deposited all undistributed funds into the California Unclaimed Property Fund in accordance with California Code of Civil Procedure section 1300, et seq., Stratton shall report to the Court and all parties to this action that she has completed the distribution and seek to obtain this Court's order terminating the Plan and Trust discharging SGP and Stratton.

G. Opposition to Settlement and Distribution

No objections to the substantive relief sought have been filed. (Doc. 150, Stratton Reply and Reply Summary to All Objections, Filed September 11, 2006.) The only objections are by claimants who objected to the way that their particular claims are treated under the proposed plan of distribution.

(*Id.*) Since the September 18, 2006 hearing, those objections have been resolved. (Doc. 170, Second Proposed Findings of Fact and Conclusions of Law, Filed November 17, 2006.)

H. Relief Requested

Stratton seeks an order from this Court for the following:

- (1) Approving Stratton's settlement agreements with Sunkist Growers, Inc. And Ted Jones, the Glacier Defendants, and the Former Trustee Defendants.
- (2) Permanently barring and enjoining the following from initiating or pursuing any claims or actions against SGP/P/T or the Settling parties relating in any way to SGP/P/T including claims or actions relating to the creation, operation, management, administration, marketing or failure of SGP, the Plan, or the Trust; the payment or non payment of benefits or claims for services; or any promise representation, contract, or other activity relating to SGP, the Plan, or the Trust:

- (a) all claimants, creditors, participants, and beneficiaries of SGP/P/T,
- (b) recipients of settlement funds, and others including those who filed bankruptcy claims or Proofs of Claims in this action and all who received Stratton's notice of this motion and the opportunity to be heard at the hearing on this motion.

- (3) Finding that all persons or entities who accept a check from Stratton pursuant to her Distribution Plan are, by endorsing, cashing, or otherwise negotiating that check agreeing to and will be bound by the terms of the settlement agreement.
- (4) Approving payment of fees and reimbursement of expenses to administrative and other professionals
- (5) Approving the proposed Distribution Plan
- (6) Approving the Bankruptcy Trustee's Final Report of Administration and
- (7) Retaining jurisdiction of this case to ensure the settlements are carried out.

4. STANDARD OF REVIEW

"The court must approve any settlement...of the claims...of a certified class." Fed. R. Civ. P. 23(e)(1)(A). The court may approve a settlement only after a hearing and on finding that it is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(C). Such approval is required to make sure that any settlement reached is consistent with plaintiffs' fiduciary obligations to the class. *See, Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The court also serves as guardian for the absent class members who will be bound by the settlement, and therefore must independently determine the fairness of any settlement. *Id.* However, the district court's role in intruding upon what is otherwise a private consensual agreement is limited to the extent necessary to reach a reasoned judgment

1 that the agreement is not the product of fraud or collusion
2 between the negotiating parties, and that the settlement, taken
3 as a whole, is fair, reasonable, and adequate to all concerned.
4 *FDIC v. Alshuler (In re Imperial Corp. of Am.)*, 92 F.3d 1503,
5 1506 (9th Cir. 1996). Therefore, the settlement hearing is not
6 to be turned into a trial or rehearsal for trial on the merits.
7 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625
8 (9th Cir. 1982).¹⁰ Ultimately, the district court's
9 determination is nothing more than an amalgam of delicate
10 balancing, gross approximations, and rough justice. *Id.*

11 In determining whether a settlement agreement is fair,
12 adequate, and reasonable to all concerned, a district court may
13 consider some or all of the following factors: (1) the strength
14 of the Plaintiff's case (2) the risk, expense, complexity, and
15 likely duration of further litigation; (3) the risk of
16 maintaining class action status throughout the trial; (4) the
17 amount offered in settlement; (5) the extent of discovery
18 completed; (6) the stage of the proceedings; (7) the views and
19 experience of counsel; (8) any opposition by class members; (9)
20 the presence of a governmental participant. *Linney v. Cellular*
21 *Alaska Pshp.*, 151 F.3d 1234, 1242 (9th Cir. 1998). This list of
22 factors is not exclusive and the court may balance and weigh
23 different factors depending on the circumstances of each case.

24

25 ¹⁰ It is not the role of the district court to reach any
26 ultimate conclusions on the contested issues of fact and law
27 which underlie the merits of the dispute. *Officers for Justice*
28 *v. Civil Service Com.*, 688 F.2d at 625. It is the uncertainty of
the outcome in litigation and avoidance of wasteful and expensive
litigation that induce consensual settlements. *Id.*

Torrissi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993). This necessarily requires the court to make a careful analysis of all the facts and applicable law. *Montgomery County Real Estate*, 83 F.R.D. 305, 316 (MD 1979). In addition, where the payment of attorneys fees is also part of the negotiated settlement, the fee settlement must be evaluated for fairness in the context of the overall settlement. *Kinsely v. Network Assocs.*, 312 F.3d 1123, 1126 (9th Cir. 2002).

5. DISCUSSION

A. The Merits of the Settlement Agreement

1. Strength of Stratton's Case and the Expense, Complexity, and Likely Duration of Further Litigation

Stratton believes she has a better than 60% chance of prevailing against both Sunkist and the Former Trustee Defendants in litigation. As against the Glacier Defendants, Stratton believes she has a greater than 75% chance of prevailing in litigation. However, each of the Defendants dispute and deny liability.

Sunkist argues that Stratton will recover less than the \$2,027,376.00 settlement amount Sunkist has agreed to pay. Sunkist asserts that its capital contribution obligation was capped at the \$1 million statutorily required for excess reserves and that only \$258,581 could be recovered. Sunkist also maintains that Stratton will find no evidence to support a claim of active malfeasance by Sunkist in relation to SGP/P/T. Proof of active malfeasance is required in this case where Sunkist did not have a formal fiduciary position in the Plan. Sunkist's role in the operation of the SGP Plan was more

1 tangential and Sunkist employees were not eligible to
2 participate in the Plan. Sunkist denies it ever managed the
3 Plan. Sunkist further argues that its corporate structure
4 prevents it from exercising control over the Plan as it has no
5 inside Directors. Most directors were principals and prominent
6 employees of grower-member citrus businesses that are
7 financially independent of Sunkist. While some of the Sunkist
8 related SGP Trustees were Directors of Sunkist, none were
9 Sunkist employees and Sunkist maintains that their allegiance
10 was to their own businesses, not to Sunkist. Stratton admits
11 that claims dependant on an "inferred" overlap may call for
12 evidence that Sunkist actually directed the activities of the
13 Plan for the benefit of Sunkist. Stratton admits that she has
14 not yet identified such evidence.

15 As against the Trustee Defendants, although Stratton is
16 confident in her claims, she also recognizes the risk that she
17 may not prevail against them in litigation. Former Trustee
18 Defendants deny liability. They contend that they properly and
19 prudently relied upon information and reports from professional
20 service providers. Also, Stratton argues that because the
21 insurance policy for the Former Trustee Defendants is a "burning
22 limits" policy, pursuing litigation would likely exhaust all
23 insurance proceeds otherwise available to satisfy judgment.
24 Litigation will necessarily involve a large number of
25 consultants and trial experts. The cost of trial to final
26 judgment is estimated to exceed \$2 million and, after
27 litigation, there would be no insurance proceeds left. Were
28 Stratton to seek judgment above the insurance coverage limit,

1 her recourse is against the Former Trustee Defendants. The
2 Former Trustee Defendants claim their assets are encumbered or
3 protected by exemptions.

4 Glacier likewise intends to raise and vigorously litigate
5 factual and legal defenses against Stratton if the settlement is
6 not approved. Glacier submitted a five page memorandum
7 outlining a number of complex issues they intend on raising if
8 the case goes to trial. Litigation is estimated to delay the
9 resolution of this matter for several years.

10 The cost of pursuing judgment through litigation, the risk
11 of not prevailing, and the delay and difficulty in litigating
12 insurance coverage issues and/or pursuing individual assets in
13 the face of a likely concerted defense effort weighs in favor of
14 settlement among the parties.

15 **2. Amount Offered in Settlement**

16 The agreement between Sunkist and Stratton provides for a
17 resolution of all claims against Sunkist and Jones in return for
18 Sunkist's payment of a base sum of approximately \$2.5 million.
19 Sunkist deposited the full amount into an escrow account and,
20 through subsequent agreements released a portion of it to pay
21 for the expenses of claims administration.

22 In the agreement between Former Trustee Defendants and
23 Stratton, Former Trustee Defendants have agreed to contribute \$1
24 million to settle the case.

25 In the agreement between Glacier and Stratton, Glacier has
26 agreed to contribute \$ 2 million. This amount has been
27 deposited with the Registry of this Court for payment over to
28 Stratton with interest if the settlement is approved.

1 The combined settlement agreements yield approximately
2 \$5,027,376.00. Stratton argues that the proposed settlements
3 are in the best interest of all the parties involved. The
4 Settlement Funds from all Defendants will result in a
5 distribution and payment of approximately \$0.78 to \$0.83 on the
6 dollar for allowed claims against an ERISA plan which otherwise
7 may remain bankrupt, pay nothing, and leave participants and
8 beneficiaries to respond personally to the full amount of claims
9 and/or suits of medical providers. However, the proposed
10 settlements are contingent upon court approval and a finding
11 that the agreements settle, release, and foreclose all claims of
12 SGP/P/T, Plan participants and beneficiaries, and other
13 potential joint tortfeasors or co-obligors against the settling
14 Defendants.

3. The Extent of Discovery Completed at this Stage in the Litigation¹¹

Stratton argues that she has been able to minimize the cost of conducting extensive and time consuming formal discovery by relying on the investigation conducted by the DOL prior to the initiation of this litigation. The DOL conducted an investigation into the management, operation, finances, and bankruptcy of the Plan. This investigation involved 579 hours of work and an inspection of approximately 400 banker boxes of Glacier and Plan documents. From this investigation Stratton received information as to the cause of SGP's and the Plan's

¹¹ This also satisfies the factor taking into account the presence of a governmental participant since the United States DOL conducted the investigation in this case.

1 collapse and as to the identity of those potentially responsible
2 for the collapse. The DOL shared with Stratton and her counsel
3 the results of their investigation and gave Stratton copies of
4 key documents and conclusions.

5 The only motions filed in this case related to the
6 settlement efforts in this case. The settlement proposal was
7 not hastily arrived at and is the result of several years of
8 negotiations amongst the settling parties. No objecting party
9 complained about the inadequacy of discovery.

10 **4. The Views and Experience of Counsel**

11 Stratton is the trustee and the Chapter 7 court appointed
12 independent fiduciary for SGP/P/T. (Doc. 121-5, Stratton Decl.
13 In Support of Motion, Filed July 11, 2006, ¶ 1.) She is also a
14 partner with the law firm Seng and Stratton. (*Id.*) Stratton
15 has engaged in the investigations, negotiations and settlements,
16 and administrative and other acts related to these settlement
17 agreements since 2002. Stratton believes that approval of these
18 settlement agreements is in the best interests of all the
19 parties. Further, this motion is brought with the knowledge and
20 approval of the Secretary of the United States DOL who, although
21 not a party to this litigation, has followed the case closely
22 and authorized Stratton to inform the Court that the DOL has no
23 objections. (Doc. 121-5, Stratton Decl. In Support of Motion, ¶
24 4.)

25 Further, Judge Layne Phillips who served as the mediator on
26 December 17, 2003, in negotiations between Stratton and the
27 Glacier Defendants also supports the court approval of this
28 settlement. (Doc. 121-5, Ex. E, Phillips Decl. In Support of

1 Motion.) Judge Phillips is a retired Federal District Court
2 Judge who is now a full time professional mediator and manager of
3 Irell & Manella's Alternative Dispute Resolution Center in
4 Newport Beach, CA. In his 25 years as a private attorney, U.S.
5 Attorney, Federal Judge and Mediator, Judge Phillips has had
6 extensive experience with the issues present in this case.

7 (Doc. 121-5, Ex. E, Phillips Decl. In Support of Motion., ¶ 8.)
8 Judge Phillips argues that this is "a very very complex case in
9 which both sides face substantial substantive, procedural, and
10 insurance coverage issues." (*Id.*, at ¶ 9(a).) It is likely
11 that each side will incur a large amount of legal expenses if
12 settlement is not reached and the case goes on to litigation.
13 (*Id.*, ¶ 9(b).) Judge Phillips therefore supports the proposed
14 settlement and encourages the Court to approve it. (*Id.*, ¶ 6.)

15 **5. Opposition by Class Members**

16 There were no objections filed to the substantive relief
17 sought by the parties. The only objections are by claimants who
18 object to the way their particular claims are treated under the
19 proposed plan of distribution. Since the hearing on September
20 18, 2006 all objections against the settlement have been
21 resolved.

22 After a careful balance of the aforementioned factors,
23 Stratton's request for approval of the settlement agreement and
24 distribution plan is **GRANTED**.

25 **B. Was the Notice of the Settlement Provided Fair?**

26 Adequate notice is critical to court approval of a class
27 settlement under Fed. R. Civ. P. 23(e). *Hanlon v. Chrysler*
28 *Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). "The best notice

1 practicable under the circumstances" must be provided to class
2 members. Fed. R. Civ. P. 23(c)(2)(B). Notice is satisfactory
3 in the context of settlement if it fairly apprises class members
4 of the terms of the settlement in sufficient detail to afford
5 them the opportunity to decide whether they should accept the
6 benefits offered, opt out and pursue their own remedies, or
7 object to the settlement. *Churchill Village, L.L.C. v. General*
8 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); see also *Hanlon*, 150
9 F.3d at 1025.

10 The district court approved the form of notice in this case
11 during the preliminary approval process. (See, Doc. 92, Order
12 RE: Preliminary Approval of Settlement; Approval of Notice to
13 Claimants; and Temporary Injunctive Relief, Filed October 14,
14 2004.) The Notice presented meets the requisite standards of
15 clarity and conciseness as required by Fed. R. Civ. P. 23. It
16 explains the nature of the action, the definition of the Class,
17 a brief summary of the Class claims, and that a Class member may
18 enter an appearance through counsel if the member so desires.
19 (See Doc. 121, Notice of Motion for Final Court Approval, Filed
20 July 11, 2006.) The Notice provides Class members with
21 information explaining that there is no "opt-out" procedure in
22 this case. (*Id.*) It informs claimants that if they object to
23 any relief sought in the motion, a claimant must file and serve
24 a written objection, giving specific instructions of how to do
25 so. (*Id.*) In addition, the Notice explains the binding effect
26 of the Settlement Agreement on Class members, stating that they
27 "will be bound by it, and [] will not be able to bring a
28 separate lawsuit alleging the same or similar claims." (*Id.*)

1 In early 2005, Stratton and Musson, determined the scope of
2 the mailing list which would be used for mailing the "claims
3 package" to persons and entities who may have a claim against
4 SGP Benefit Plan. (Doc. 149-3, Musson Decl. In Reply to Kaweah
5 Objection, Filed September 11, 2006, ¶ 3.) The claims package
6 included the claim form which was previously approved by the
7 court. (*Id.*) The mailing list consisted of approximately
8 30,000 addresses, and was derived from several different
9 sources, including the mailing list of those who had filed
10 claims with the bankruptcy court in the SGP Benefit Plan, Inc.
11 case. (*Id.*)

12 The claims package was mailed in February 2005. (*Id.*, ¶
13 4.) After the mailing, approximately 3,000 returned envelopes
14 were received. (*Id.*) The claims administrator then prepared a
15 spreadsheet of the addresses of all the returned envelopes.
16 (*Id.*) Further, notices of the September 18th hearing on this
17 matter were mailed in July 2006 in both English and Spanish.
18 (*Id.*, ¶ 7.) The claims administrator received approximately
19 5,142 returned envelopes. (*Id.*) The claims administrator
20 conducted a random sampling of 10 of those envelopes to
21 determine whether the notice in them was complete in both
22 English and Spanish. (*Id.*) The claim administration staff then
23 conducted a random sampling of 200 additional envelopes and
24 found that three envelopes did not contain a complete copy of
25 both the English and Spanish versions of the notice. (*Id.*)

26 At the hearing on September 18, 2006 Stratton informed the
27 court that she failed to comply with a provision of the
28 settlement agreement to conduct a reasonable search of

1 additional addresses for the returned mail. The hearing was
2 continued to November 22, 2006 to give Stratton an opportunity
3 to attempt to remail returned Notices and report to the parties
4 on her efforts to do so. At the November 22, 2006 hearing,
5 Stratton informed the court that she remailed the returned
6 notices in compliance with the provision.

7 Notice in this case is found to be fair and reasonable.

8 **C. Stratton's Request for Permanent Injunction**

9 Even where subject matter jurisdiction is satisfied in the
10 original action, enforcement of a final settlement agreement and
11 order requires its own basis for jurisdiction before the federal
12 court may interpret and apply its own judgment to the future
13 conduct contemplated by the judgment. *Sandpiper Vill. Condo.*
14 *Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d 831, 841 (9th Cir.
15 2005). The requisite independent basis for jurisdiction may be
16 supplied by a provision in the settlement agreement and order
17 that expressly retains jurisdiction in the district court for
18 the purpose of overseeing and enforcing prior judgment. *Id.*
19 Such a provision, in conjunction with the All Writs Act,¹²
20 empowers a district court to protect its judgment from a
21 subsequent action that frustrates the purpose of the settlement
22 agreement and order. *Id.* Injunctions under the All Writs Act
23 are not subject to the standards for preliminary injunction
24 under Fed. R. Civ. P. 65. *In re Baldwin-United Corp.*, 770 F.2d

25
26 ¹² The All Writs Act, 28 U.S.C. § 1651(a) provides, "The
27 Supreme Court and all courts established by Act of Congress may
28 issue all writs necessary or appropriate in aid of their
respective jurisdiction and agreeable to the usages and
principles of law."

1 328, 330 (2nd Cir. 1985).

2 The All Writs Act is limited by the Anti-Injunction Act.¹³
3 *Sandpiper Vill. Condo. Ass'n.*, 428 F.3d at 841. However, under
4 the Anti-Injunction act a federal court may intervene and enjoin
5 future litigation in three narrow exceptions, one of which
6 includes, when it is necessary, to protect the court's
7 jurisdiction. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025
8 (9th Cir. 1998).

9 In seeking approval for the settlement Stratton has
10 requested that the following be enjoined from initiating or
11 pursuing any claims or actions against SGP/P/T or the Settling
12 parties relating in any way to the instant matter:

13 (1) all claimants, creditors, participants, and
14 beneficiaries of SGP/P/T who are subject to the court's
15 jurisdiction

16 (2) recipients of settlement funds, and others including
17 those who filed bankruptcy claims or Proofs of Claims in
18 this action and all who received Stratton's notice of this
19 motion and the opportunity to be heard at the hearing on
20 this motion.

21 The terms of this settlement agreement requires that all
22 suits against Defendants regarding their action relative to
23 SGP/P/T be permanently enjoined for the agreements to have
24 effect. In dealing with such settlements, the Second Circuit

25
26 ¹³ The Anti Injunction Act, 28 U.S.C. § 2283 provides, "A
27 court of the United States may not grant an injunction to stay
28 proceedings in a State court except as expressly authorized by
Act of Congress, or where necessary in aid of its jurisdiction,
or to protect or effectuate its judgments.

1 has said, "as a practical matter, no defendant in the
2 consolidated federal actions in the present case could
3 reasonably be expected to consummate a settlement of those
4 claims if their claims could be reasserted under state law,
5 whether by states on behalf of the plaintiffs, or by anyone
6 else, seeking recovery of money to be paid to the plaintiffs."

7 *In re Baldwin United Corp.*, 770 F.2d at 336-337. Allowing other
8 state or federal cases to be brought against the settling
9 Defendants would be counter productive and result in a waste of
10 party and judicial resources that have be invested in settling
11 this matter. Stratton, as the SGP trustee is acting in the
12 interest of both SGP and the claimants to maximize recovery.
13 The parties have all been given notice and an opportunity to
14 object.

15 In accordance with the best interest of all the parties
16 involved, Stratton's request for a permanent injunction is
17 **GRANTED.**

18 **D.. Attorney's Fees**

19 Attorneys' fees provisions included in proposed class
20 action settlement agreements are, like every other aspect of
21 such agreements, subject to the court's scrutiny for fairness,
22 reasonableness, and adequacy. *Staton v. Boeing Co.*, 327 F.3d
23 938, 963 (9th Cir. 2003). "Thus, to avoid abdicating its
24 responsibility to review the agreement for the protection of the
25 class, a district court must carefully assess the reasonableness
26 of a fee amount spelled out in a class action settlement
27 agreement." *Id.* If fees are unreasonably high, there is a
28 "likelihood [] that the defendant obtained an economically

1 beneficial concession with regard to the merits provisions, in
2 the form of lower monetary payments to class members or less
3 injunctive relief for the class than could otherwise have [been]
4 obtained." *Id.* at 964. However, the court's task in reviewing
5 negotiated fees is different from the court's task in fashioning
6 fee awards from scratch. *Robbins*, 127 Cal. App. 4th at 444.
7 The court is simply to determine whether the negotiated fee is
8 facially fair and reasonable. *Id.* This task requires the court
9 to review the settlement agreement as a whole, including the fee
10 award, to ensure that it was fairly and honestly negotiated, is
11 not collusive, and adequately protects the interests of the
12 parties. *Id.* Plaintiffs' attorneys have a duty to limit fees
13 to an amount that represents the value of the work done. *Id.*
14 Therefore, although a negotiated fee may represent a reasoned
15 business decision to settle, a negotiated fee that exceeds a
16 reasonable fee for the attorneys' contribution may not be
17 approved. *Id.*

18 In calculating attorneys' fees in civil class action suits,
19 the district court has discretion to use either the percentage
20 method or the lodestar/multiplier method. *Hanlon*, 150 F.3d at
21 1029.¹⁴ In determining Attorneys' Fees, counsel has used the
22 lodestar method in this case. "In determining what a reasonable
23 attorney's fee entails, the district court must apply the hybrid
24 approach adopted in *Hensley v. Eckerhart*, 461 U.S. 424, 433 []

25
26

¹⁴ When a settlement agreement creates a large fund for
27 distribution to a class, as is the case here, courts may use
28 either of these two options in determining what is fair and
reasonable.

1 (1983)." *United States v. \$12,248 U.S. Currency*, 957 F.2d 1513,
2 1520 (9th Cir. 1992). "The most useful starting point for
3 determining the amount of a reasonable fee is [1] the number of
4 hours reasonably expended on the litigation [2] multiplied by a
5 reasonable hourly rate." *Sorenson v. Mink*, 239 F.3d 1140, 1145
6 (9th Cir. 2001) (relying upon *Hensley*, 461 U.S. at 433). The
7 resulting figure is known as the "Lodestar."

8 To determine what qualifies as reasonable attorney's fees,
9 the Ninth Circuit has adopted the twelve Lodestar Factors as
10 "guidelines [and] as appropriate factors to be considered in the
11 balancing process required in a determination of reasonable
12 attorney's fees:"

- 13 (1) the time and labor required,
- 14 (2) the novelty and difficulty of the questions involved,
- 15 (3) the skill requisite to perform the legal service
properly,
- 16 (4) the preclusion of other employment by the attorney due
to acceptance of the case,
- 17 (5) the customary fee,
- 18 (6) whether the fee is fixed or contingent,
- 19 (7) time limitations imposed by the client or the
circumstances,
- 20 (8) the amount involved and the results obtained,
- 21 (9) the experience, reputation, and ability of the
attorneys,
- 22 (10) the "undesirability" of the case,
- 23 (11) the nature and length of the professional relationship
with the client, and

1 (12) awards in similar cases.

2 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 71 (9th Cir.
 3 1975) (suits brought pursuant to 29 U.S.C. §§ 412 and 529)
 4 (citing *Johnson*, 488 F.2d 714); see also *\$12,248 U.S. Currency*,
 5 957 F.2d at 1520 (applying the twelve factors outlined in *Kerr*
 6 to the EAJA). “[Although] the lodestar determination has emerged
 7 as the predominate element of the analysis....the court [can
 8 still] make adjustments to the lodestar figure based on the
 9 ‘riskiness’ of the lawsuit and the quality of the attorney’s
 10 work.” *Jordan v. Multnomah Co.*, 815 F.2d 1258, 1262 n.5 (9th
 11 Cir. 1986). In addition, the court may reduce the fee award “if
 12 the relief, however significant, is limited in comparison to the
 13 scope of the litigation as a whole.” *Hensley*, 461 U.S. at 440.

14 **1. Beth Maxwell Stratton**

15 Stratton requests the following fees:

16 Person's Name	17 Hourly Rate x Total Hours = Total Fees
18 Beth Mexwell Stratton, Chapter 7 Trustee	19 \$175.00 x. 167.85 hours = \$28,763.75
20 Jeanne Bohlae, Secretary/Legal Assistant	21 \$65.00 x 5.60 hours = \$364.00
22 Rochelle Ramirez, Assistant	23 \$50.00 x 3.2 hours = \$160.00
24 Angelo DeSantis, Assistant	25 \$50.00 x 5.10 hours = \$255.00
26 Angela Guthrie, Assistant	27 \$25.00 x. 2.0 hours = \$50.00
28 TOTAL	\$29,502.75

1 Stratton requests the following as an Independent Fiduciary
2 of the SGP benefit Plan and Trust for services rendered through
3 April 18, 2006:

4 Person's Name	Hourly Rate x Total Hours = Total Fees
5 Beth Maxwell Stratton, Chapter 7 Trustee	\$175.00 x 205.95 hours = \$ 36041.25
6 Desiree Terronez, Assistant	\$100.00 x. 13.5 hours = \$1,350.00
7 TOTAL	\$ 37,391.25 adjusted to \$38,752.50

8
9 Stratton requests the following as compensation for her
10 employees:

13 Person's Name	Hourly Rate x Total Hours = Total Fees
14 Rochelle Ramirez, Assistant	\$50.00 x 35.5 hours = \$1,775.00
15 Angela Guthrie, Assistant	\$25.00 x. 22.0 hours = \$550.00
16 Nithi Jhaveri, Assistant	\$50.00 x 26.5 hours = \$1,325.00
17 TOTAL	\$3,650.00

18 Lastly, Stratton requests a reimbursement of expenses, the
19 sum of **\$6,542.88**.

20 Stratton requests a total of **\$78,448.13** for her services.

21 **2. Trucker Huss Law Firm**

22 To the Trucker Huss law firm, a recognized San Francisco
23 authority in the ERISA field retained by the Trustee/Independent
24 Fiduciary to advise her on ERISA law and legal issued unique
25 thereto, the sum of **\$48,746.26**.

3. Seng & Stratton's Request for Attorney's Fees

2 The contract between Stratton and Seng & Stratton is based
3 on a contingency agreement approved by the bankruptcy court on
4 May 15, 2002. (Doc. 113, Seng & Stratton Application for Fees,
5 Filed July 7, 2006.) Pursuant to the agreement, if recovery is
6 obtained after a lawsuit is filed but before the date the case is
7 first set for trial, Seng and Stratton shall be paid: \$75.00/hour
8 for all attorney time spent in the case, \$25.00/hour for all
9 legal assistant/paralegal time spent on the case and 15% of the
10 settlement/recovery. Seng & Stratton request the following in
11 attorneys fees:

Person's Name	Hourly Rate x Total Hours = Total Fees
Michael J. Seng, Partner	\$75.00 x 759.60 hours = \$56,970.00
Beth Maxwell Stratton, Partner	\$75.00 x 333.60 hours = \$25,020.00
Research Attorney, Independent Contractor	\$75.00 x 2.40 hours = \$180.00
Legal Assistant / Paralegal	\$25.00 x 31 hours = \$775.00
TOTAL	\$82,945.00

The calculation of the contingency fee is as follows:

Settlement with Sunkist	\$2,027,376.00
Settlement with Glacier Defendants	\$2,000,000.00
Settlement with Former Trustee Defendants	\$1,000,000.00
Total Settlement/Recovery	\$5,027,376.00

x 15%	\$754,106.40
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The total fees requested are: **\$837,051.40**. Seng & Stratton is also requesting an expense reimbursement of **\$2,980.80**.

4. McCormick, Barstow, Sheppard, Wayte, & Carruth

Attorney James P. Wagoner requests a total of **\$945.00**. This is based on the following: \$225.00 x 4.2 hours = \$945.00.

5. Law Office of Alyson A. Berg

Attorney Alyson A. Berg requests a total of **\$1,065.00**.

6. Janzen, Tamperi, & Wong, Accountants for Plaintiff

According to the Declaration of Christopher A. Ratzlaff, CPA, accountants for Plaintiff are requesting a total of **\$12,600.00**, which is a reasonable value of the services rendered by the accountants for Plaintiff.¹⁵

All hours calculated are reasonable. Class counsel spent nearly four years investigating and researching this case, working closely with the DOL legal and investigative staff to determine liability of the Plan and reach a settlement with all respective parties. reviewing extensive documentation and engaging in negotiations amongst all parties to reach a settlement. The hourly rates used to calculate the lodestar are also reasonable. There were no objections to the proposed fees by any party.

The award for Attorneys Fees is **GRANTED**.

¹⁵ Stratton has informed the court that Janzen, Tamperi, & Wong may submit further fee applications for fees and costs incurred after April 2006. The court has not yet received such application.

6. CONCLUSION

After a careful balance of the aforementioned factors, Stratton's request for approval of the settlement agreement and distribution plan is **GRANTED**.

In accordance with the best interest of all the parties involved, a Stratton's request for a permanent injunction is **GRANTED**.

The following Attorneys Fees are **GRANTED**:

- To Stratton a total of **\$78,448.13** for her services as Bankruptcy Trustee and as Independent Fiduciary.
- To the Trucker Huss law firm a total of **\$48,746.26**.
- To Seng & Stratton a total of **\$840,032.20**, which includes the request for expense reimbursements.
- To McCormick, Barstow, Sheppard, Wayte & Carruth a total of **\$945.00** for attorney services rendered.
- To Attorney Alyson A. Berg, a total of **\$1,065.00**.
- To Janzen, Tamberi, & Wong, Accountants for Plaintiff a total of **\$12,600.00**.

IT IS SO ORDERED.

Dated: January 26, 2007
b2e55c

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE